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10 Attorneys for Defendants
11 HARVEST REDWOOD RETIREMENT RESIDENCE,
12 L.L.C., doing business as Redwood Retirement Residence,
13 RETIREMENT RESIDENCE, L.L.C.; and HOLIDAY
14 RETIREMENT CORP.

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 GREATER NAPA FAIR HOUSING
18 CENTER, a California Not for Profit
19 Corporation, doing business as FAIR
20 HOUSING NAPA VALLEY, as an
21 individual entity only; RUBY DUNCAN,
22 an incompetent adult, by and through her
23 Guardian Ad Litem, MAE LOUISE
24 WHITAKER; and EVA NORTHERN, an
25 incompetent adult, by and through her
Guardian Ad Litem, NANCY
NORTHERN, each individually and on
behalf of individuals similarly situated;
NANCY NORTHERN, in her individual
capacity only; and MAE LOUISE
WHITAKER, in her individual capacity
only,

26 Plaintiffs,

27 v.

28 HARVEST REDWOOD RETIREMENT
RESIDENCE, L.L.C., doing business as
Redwood Retirement Residence;
REDWOOD RETIREMENT RESIDENCE
L.L.C.; and HOLIDAY RETIREMENT
CORP.,

Defendants.

No. C07-3652 PJH

**MOTION TO SUBMIT SUPPLEMENTAL
DECLARATION IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION; AND
DECLARATION OF KENNETH BRADY**

Date: September 26, 2007
Time: 9:00 a.m.
Dept: Ctrm. 3, 17th Fl.
Judge: Hon. Phyllis J. Hamilton

Defendants Harvest Redwood Retirement Residence, LLC, Redwood Retirement Residence, Redwood Retirement Residence LLC, and Holiday Retirement Corporation (hereinafter “Defendants”) respectfully request the Court to allow Defendants to submit a supplementary declaration in opposition to Plaintiffs’ Motion for Preliminary Injunction. This request is made on the grounds that Plaintiffs submitted additional evidence with their reply papers to which Defendants should be given a reasonable opportunity to respond, and that Plaintiffs’ motion is otherwise premature with no initial disclosures or discovery to date.

This request is based on the memorandum of law that follows, and all the pleadings and papers on file in this action. The declaration of Redwood resident Kenneth Brady is attached to this request.

MEMORANDUM OF LAW

I. FACTS

The Complaint in this case was filed on July 16, 2007, and served on July 19, 2007. Plaintiffs' filed their Motion for Preliminary Injunction shortly thereafter, and Defendants filed their Opposition to Plaintiffs' Motion for Preliminary Injunction on September 5, 2007. On September 12, 2007, Plaintiffs filed a Reply to Defendants' Opposition. Plaintiffs submitted four new declarations along with their Reply brief. Defendants objected to Plaintiffs' supplemental declaration on September 19, 2007.

II. ARGUMENT

As a general rule, reply papers should be limited to matters raised in the opposition papers. It is improper for the moving party to “shift gears” and introduce new facts or different legal arguments in the reply brief than presented in the moving papers. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 894-95 (1990). And while Civil Local Rule 7.3 allows parties to submit declarations along with reply briefs, the opposing party should be given a reasonable opportunity to respond to new evidence. *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998).

In response to the four new declarations submitted by Plaintiffs on reply, Defendants ask the Court to consider the attached declaration of Kenneth Brady in support of its Opposition, filed

1 herewith. These papers are limited in scope and would allow the Court to fully examine the
2 issues presented in Plaintiffs' Motion.

3 Accordingly, Defendants respectfully request that the Court grant its request to submit the
4 Declaration of Kenneth Brady.

5 DATED: September 20, 2007

HANSON BRIDGETT MARCUS
VLAHOS & RUDY, LLP

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By: /s/ Kurt A. Franklin
KURT A. FRANKLIN
SARAH D. MOTT
Attorneys for Defendants

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23 HARVEST REDWOOD RETIREMENT
RESIDENCE, L.L.C., doing business as
24 Redwood Retirement Residence;
REDWOOD RETIREMENT RESIDENCE
L.L.C.; and HOLIDAY RETIREMENT
25 CORP.,

26 Defendants.

27
28 No. C 07 3652 PJH

**DECLARATION OF KENNETH BRADY
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO MOTION FOR
ISSUANCE OF PRELIMINARY
INJUNCTION**

Date: September 26, 2007
Time: 9:00 a.m.
Dept: Ctrm. 3, 17th Fl.
Judge: Hon. Phyllis J. Hamilton

1 I, Kenneth Brady, hereby declare that I have personal knowledge of the facts set forth
 2 herein and, if called upon to testify, I could truthfully and competently testify to the following:

3 1. My wife (Ruby Brady) and I became residents at Redwood Retirement Residence
 4 ("Redwood" or "Residence) in May 2007. I am 90 years old, and sometimes use a cane or other
 5 assistive device to walk.

6 2. While I understand that I am a witness to events that occur at the Residence,
 7 presently neither my wife, nor I, are interested in becoming plaintiffs or otherwise becoming
 8 involved in any lawsuit or litigation -- through a purported representative or by any other means.

9 3. Dorman "Pete" Mitchell was our immediate neighbor at the Residence. Mr.
 10 Mitchell had a hearing problem and would listen to his television or radio late into the night at an
 11 unacceptable volume. It was so loud that it caused us to complain to the managers about the noise.
 12 The managers worked with him so that he would use headphones, so as not to bother us and other
 13 neighbors.

14 4. In addition to the loud radio and television, at other times my wife and I could
 15 hear Mr. Mitchell call out for help. I specifically recall him falling inside his apartment on two or
 16 three occasions where an ambulance came and took him away. One morning, I found him
 17 completely nude on his apartment floor -- where he had fallen between two chairs. It was cold
 18 that night, and Mr. Mitchell was shivering when I found him. Because I have a bad back, I was
 19 not able to help him. I called a manager, who in turn called an ambulance. After one of his falls,
 20 his caregiver asked me not to report the fall to the managers at Redwood.

21 5. I am aware that Mr. Mitchell had an incontinence problem that he could not
 22 manage. One time, he knocked on our door and asked to use our bathroom. My wife answered
 23 the door and told him I was in the bathroom. Mr. Mitchell urinated on the floor.

24 6. I felt sorry for Mr. Mitchell, because he did not have family that helped him.
 25 However, his loud television playing or radio playing, in addition to his cries for help, was
 26 disruptive to our home.

27 7. Mr. Mitchell no longer lives next door to us. On information and belief, it is my
 28 understanding that Mr. Mitchell was hospitalized in August 2007, and that he has since moved to

1 a facility that is able to provide him with the care and other attention that he needs.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed this 17 day of September, 2007 at Oakland, Ca,
4 California.

Kenneth D Brady

Kenneth Brady

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